

NTSB Order No. EA-5092

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 25th day of May, 2004

Respondent.

Docket SE-16572

<sup>2</sup> Section 43.13(a) provides, as pertinent, that maintenance on an  
(continued...)

respondent's appeal and grant that of the Administrator.<sup>3</sup>

At the time of the alleged violations, respondent was a mechanic for Continental Airlines. On June 14, 2000, at approximately 4:00 A.M., respondent was in the cockpit of a DC-9, parked about 40-50 feet from a passenger terminal at Newark International Airport. Respondent was to perform an engine run-up to check the oil quantity indicating system. When respondent entered the cockpit, the APU<sup>4</sup> was running. Within approximately 8 seconds of turning on engine #1, the aircraft accelerated and came to rest with its nose inside the terminal. Respondent was unable to stop it. Among other things, the parking brake had not been set and the throttle for the #1 engine had been in the high power position. The Administrator charged that respondent had not followed checklist procedures required by § 43.13(a), and had been careless in violation of § 91.13(a).

The law judge affirmed all the factual allegations of the complaint, but he found that respondent had not been careless. In reaching this conclusion, he specifically held that it was

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(continued...)

aircraft shall be performed in accordance with the methods, techniques, and practices prescribed in the maintenance manual. The Administrator also charged respondent with an independent violation of § 91.13(a) (carelessness that would endanger the life or property of another). As discussed *infra*, the law judge dismissed this charge.

<sup>3</sup> We reject respondent's "Notice of errors in the FAA's Reply Brief" as it is not authorized by our rules, nor did respondent seek permission to file it.

<sup>4</sup> Auxiliary Power Unit.

beyond respondent's control to stop the aircraft once it got started. We address respondent's appeal first.

Respondent argues that he followed the checklist exactly as it was written and that the accident was the result of a flawed checklist, not his action or inaction. He points out that after the accident the checklist was changed. We need not address this matter, nor the Administrator's argument that we should not consider any remedial action regarding the checklist.

Even were respondent not required to follow the pre-power-on portion of the checklist as he argues (which required that the engine thrust be at idle and the parking brake be set), there is no disagreement that he was required to follow the engine pre-start portion of the checklist. That section required that he turn on the transfer and auxiliary hydraulic pump switches, and turn on the antiskid control. Respondent testified that he turned on the pumps as required, and that he had turned them off before he left the aircraft. The law judge specifically found that he had failed to turn them on.<sup>5</sup>

Respondent argues that the Administrator did not prove these facts, but we find no error in the law judge's findings. Granted, the evidence is circumstantial (these controls were found in the off position when the FAA inspector reached the scene approximately 4 hours after the accident and Continental employees advised him that nothing had been touched). Although

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<sup>5</sup> The hydraulics would have helped the brakes work.

respondent argues that there is no basis to trust this claim, respondent has given us no reason not to assume that Continental followed standard investigation procedures and protected the scene. There is no basis in the record for respondent's conclusion that the FAA performed a "shoddy" investigation, and we see no error in the law judge's weighing of the evidence or his credibility assessment in his rejection of respondent's contention that he had turned on these switches.<sup>6</sup>

Turning to the Administrator's appeal, we reverse the law judge's finding that respondent was not careless. The law judge apparently was convinced by respondent's argument that the 8 seconds it took between the time he turned on the engine and the aircraft hit the terminal was too short for him to have done anything to stop it. We disagree. Had respondent paid any attention to the cockpit instruments he would have seen the engine power increasing past idle even before the aircraft started to move. Had he been alert and vigilant - as he is required to be in this situation - he might have prevented the accident. Instead, he was not fully attentive and by the time he figured out what was happening, he was so close that he was

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<sup>6</sup> There was other evidence that called into question respondent's testimony. For example, right after the accident, respondent had to be told to turn off the fuel levers, thus suggesting that he had not had the presence of mind to turn off less important things such as the antiskid. (Given it was in the off position, this suggests that, contrary to his testimony, it had never been turned on.) And, in his statement to the police right after the accident he stated that there were no chocks on the rear wheels. At the hearing, he claimed to have been referring to after, not before the accident, which makes little sense.

afraid for himself and he fell out of his seat when he was trying to work the brakes.

Moreover, carelessness was evident even before he applied power. It is inconceivable to us that a mechanic in this position would not check the position of the thrust levers and engage the parking brake before starting an engine. This is the more egregious error and, in and of itself, it justifies the independent carelessness charge.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 60-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>7</sup>

ENGLEMAN CONNORS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

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<sup>7</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).